



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,180	02/25/2004	Roger W. Meads	MEADS-08913	2384

7590 09/04/2008
PHILIP M. WEISS, ESQ.
WEISS & WEISS
300 OLD COUNTRY ROAD
SUITE 251
MINEOLA, NY 11501

EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
----------	--------------

2855

MAIL DATE	DELIVERY MODE
-----------	---------------

09/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/786,180	Applicant(s) MEADS ET AL.	
	Examiner Gail Verbitsky	Art Unit 2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-13, 18, 19 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, 18, 19 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12, 22 are finally rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: it is not clear how the “remote temperature sensor” is structurally related to the device. Where the remote sensor is located: outside the cow, near the computer and what ambient temperature it is measured?

Claim 22 is finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this case, the claim language is confusing because it is not clear what the cow core temperature is compared to over the time?

Claim Rejections - 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 103 that form the basis for the rejections under this section made in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2855

Claims 1-4, 6, 8-9, 11-13, 21-26 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al. (U.S. 4865044) [hereinafter Wallace] and Ridenour (U.S. 6113539) and Kennedy et al. (U.S. 5203345) [hereinafter Kennedy].

Wallace discloses a device in the field of applicant's endeavor comprising an implant,

an implantable temperature device implanted in an ear of a cow including a thermistor 22 for measuring body temperature, a signal receiver/ transmitter 20, a processor, an animal identification device (digital chip) attachable to a body of an animal, a computer readable medium comprising a database of temperature information, and a remote/ ambient temperature sensor 23 for measuring ambient temperature of a cow compartment, wherein said processor compares temperature information received from said implantable temperature device and said remote temperature sensor with said database of temperature information and said animal identification device receives messages (check up – temperature measurement message, please note that a message of measuring temperature is considered to be a health check-up message) from said processor and generates a visual signal/ display, wherein said signal is detectable on the outside of the body/ remote of the animal upon receipt of the signal /message from the processor and wherein said implantable temperature device and animal identification device are configured for communication with the remotely located processor. Obtaining the cow temperature would suggest that the temperature should be analyzed by comparing with a standard temperature for the animal (refer, for example, to a human patient's who's temperature is automatically or mentally/by means of a health provider compared to the human normal/ standard temperature of 37 degrees C).

Wallace does not explicitly teach a two-way communication with a computer/ computer readable medium and that the alarm/ display is on the body of the cow. Wallace does not explicitly teach to continuously measure the temperature.

Ridenour discloses in Figs. 5-9 a device in the field of applicant's endeavor wherein a microprocessor send signal to a remote computer, the computer/ computer readable medium analyses the signal and remotely instructs the microprocessor to illuminate an alarm light/ display on the body of the cow.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Wallace, so as to have a display on the body of the cow, the display controllable by a remote computer, so as to

Art Unit: 2855

allow the operator to spot the cow having an abnormal temperature out of the plurality of the cow in the parlor.

Kennedy discloses the device in the field of applicant's endeavor and suggests that the cow internal temperature should be measured/ monitored continuously (col. 1, line 27) in order to determine the cow's estrus temperature. This would suggest that the temperature fluctuations could be interpreted as an estrus.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Wallace, so as to monitor the temperature continuously, as taught by Kennedy, in order to predict the occurrence of estrus, as already suggested by Kennedy.

With respect to claim 21-22: the particular time for the time extended period, i.e., 1 hour or less than a year, absent any criticality, is only considered to be the "preferred" or "optimum" time range that a person having ordinary skill in the art at the time the invention was made would have been able to determine using routine experimentation based, among other things, the cow physiology, etc. See in re Boesch, 205 USPQ 215 (CCPA 1980).

With respect to claim 22: it is inherent that the core temperature measurements could be compared to each other.

With respect to claim 25: taking more than one temperature measurement for a cow could be considered "creating a temperature data/ trend over time/ over extended time".

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace, Ridenour and Kennedy as applied to claims 1-4, 6, 8-9, 11-13, 21-26 above, and further in view of Hamel et al. (U.S. 6622567) [hereinafter Hamel].

Wallace, Ridenour and Kennedy disclose the system/ method as stated above.

They do not explicitly disclose that the transmission is a RFID transmission of claim 5.

Art Unit: 2855

Hamel discloses a device wherein the information has been transmitted using a RFID chip.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Wallace, Ridenour and Kennedy, so as to use RFID wireless communication device, as taught by Han, because both of this method are using wireless communication by means of radio frequency, as well known in the art, and because both of them are alternate types of the transmission means which will perform the same function, if one is replaced with the other.

Claim 7 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace, Ridenour and Kennedy, as applied to claims 1-4, 6, 8-9, 11-13, 21-26 above, and further in view of Han et al. (U.S. 6835553) [hereinafter Han].

Wallace, Ridenour and Kennedy disclose the system/ method as stated above.

They do not explicitly teach the limitations of claim 7.

Han discloses a system/ method comprising wirelessly transmitting a sensor data, an identification signal by means of Bluetooth wireless protocol and PDA (Personal Data Assistance) wireless communication device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Wallace, Ridenour and Kennedy, so as to use Bluetooth wireless protocol, as taught by Han, in order to transmit and interpret data with high accuracy and low noise, and determine a

Art Unit: 2855

patient's location by means of a known standard internet program, so as to minimize manufacturing costs by using a known program.

Response to Arguments

Applicant's arguments filed on May 12, 2008 have been fully considered but they are moot in view of the instant rejection necessitated by the amendment.

Applicant has amended the claims by adding the limitation including measuring temperature "over an extended period of time". In the Examiner's opinion this limitation is still too broad to make the claim allowable over the prior art: The fact that the sensor of Wallace is an implant would suggest that the sensor is not a disposable (one time measurement) sensor, and thus, it is capable to measure temperature over an extended period of time. However, for the clarity, Examiner used Kennedy who clearly suggested that the temperature should be measured continuously, thus over a period of time.

Applicant states that Ridenour does not teach an implantable device. This argument is not persuasive because, in the rejection on the merits, the Examiner uses Ridenour as a secondary reference and only for its teaching of having a display on the body of the animal. The combination of Wallace and Ridenour teaches the implantable sensor.

Applicant states that there is no teaching to combine the references. In response to applicant's argument that there is no suggestion to combine references, the examiner recognizes that there should be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. the test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). The references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Stafford et al. (U.S. 5482008) disclose a device in the field of applicant's endeavor comprising a system having a temperature-sensing device (microchip) 32 and a microchip code circuit (identification device) 5.

Wallace et al. (U.S. 4865044) [hereinafter Wallace] discloses a system comprising an implantable (implant) in a cow ear temperature sensing device (transmitter) comprising

Art Unit: 2855

an identification number generated/ processed by an encoder (processor) to be transmitted along with a temperature sensed, a signal receiver comprises a decoder (device receiving a bit rate/ digital access device from the transmitter, and means (identification device) comprising identification code (col. 2, lines 35-46), thus, means in the implanted transmitter that used for identification or location. Also, the fact that Wallace discloses the identification code/ number would suggest that there is an identification device bearing/ storing the identification code/ number, and that the information should become available to an operator one way or another, i.e., as visual, auditory or visual/ auditory signal, so as to correlate the temperature to the particular cow.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2855

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

Gail Verbitsky
Primary Patent Examiner, TC 2800

August 21, 2008

/Gail Verbitsky/
Primary Examiner, Art Unit 2855